

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| APPLICANT : | Francisco Sanchez-Madrid <i>et al.</i> | CONFIRMATION No. : | 1583 |
| SERIAL NUMBER : | 10/770,639 | EXAMINER : | <u>SKELDING,</u> <u>ZACHARY S</u> |
| FILING DATE : | February 2, 2004 | ART UNIT : | 1644 |
| PATENT No. : | 7,867,475 | ISSUE DATE : | January 11, 2011 |
| FOR : | IMMUNE REGULATION BASED ON THE DEPLETION OF CD69+ CELLS | | |

Via EFS

**REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED
ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d)**

U.S. Patent No. 7,867,475 issued on January 11, 2011 from the above referenced application. The face of the patent indicates that the patent term adjustment is **1372** days. Applicants hereby respectfully request reconsideration of the patent term adjustment. Specifically, Applicants believe that the total patent term adjustment should be **1374** days.

In support of this request, Applicants submit the following statement of facts pursuant to 37 C.F.R. §1.705(b).

(i) The adjustment under 35 U.S.C. §154(b)(1)(A), for failure of the Office to take certain actions within specified time frames, is **597** days , of which **40** days overlap within the period under 35 U.S.C. §154(b)(1)(B).

(ii) The reduction of patent term under 35 U.S.C. §154(b)(2)(C), for Applicants' failure to engage in reasonable efforts to conclude prosecution of the application, is **159** days. This number differs from that calculated by the Office by 2 days for the following reasons:

Applicants believe that **6** days of delay should be attributed under 35 U.S.C § 154(b)(2)(C) for Applicants' Response to Notice to File Missing Parts submitted on August 18, 2004.

The Office incorrectly attributed **8** days of delay to Applicants under 37 C.F.R. §1.704. Specifically, Applicants' Information Disclosure Statement submitted November 8, 2010 ("the IDS") included a statement under Sections 1.704(d). Accordingly, no delay should have been

attributed to Applicants for the filing of this IDS. The 8-day PTA reduction is in error and should be removed. Thus, the correct patent term adjustment calculated under §154(b)(2)(C) is **159** days $[6 + 13 + 92 + 31 + 2 + 15 = 159]$.

(iii) The correct patent term adjustment calculated under 35 U.S.C. §154(b)(1)(B) is **976** days, due to the failure of the Office to issue a patent within three years after the date on which the application was filed, but not including any overlap with the period in (i) and excluding the period, if any, for Appellate Review. This application was filed on February 2, 2004 and issued on January 11, 2011. Under §154(b)(1)(B), the patent should have issued on or before February 2, 2007, a delay of 1439 days (the period from and including February 3, 2007, which is the date that is the day after the three year anniversary of filing, to the issue date, January 11, 2011). Applicants filed a Notice of Appeal on February 15, 2008. A second Notice of Appeal was filed on March 16, 2010. The periods of Appellate Review ($300 + 163 = 463$ days), are excluded from the period under §154(b)(1)(B) according to the rule in 37 C.F.R. 1.703(b)(1). The 40 days of Office delay for failure to respond to an Appeal taken under 35 U.S.C. §134 or failure to respond to an Appeal Brief under 37 C.F.R. §41.37 within four months of a response by Applicants overlaps with the period under 35 U.S.C. §154(b)(1)(B) and the period of Appellate Review. Thus, the correct patent term adjustment calculated under §154(b)(1)(B) is **976** days ($1439 - 463 = 976$ days).

The adjustment sought under 37 C.F.R. §1.703(f) is the sum of the non-overlapping periods under §154(b)(1)(A) (**557** days, $597 - 40$) and §154(b)(1)(B) (**976** days), less the delays attributable to Applicants (**159** days), or **1374** days.

Applicants note that the above-identified application is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. §1.704, other than the circumstances of record.

U.S.S.N.: 10/770,639

U.S.P.N.: 7,867,475

Applicant: Francisco Sanchez-Madrid *et al.*

Attorney Docket No.: 27331-501CIP2A

In summary, Applicants respectfully request an adjustment of patent term under 37 C.F.R. §1.703 to indicate a total PTA of **1374** days. Pursuant to 37 C.F.R. §1.705(d) and §1.18(e), the fee required for filing this application for patent term adjustment is believed to be **\$200.00**. Please charge the required fee, and any additional fees due, or credit any overpayment of same, to Deposit Account No. **50-0311**, Customer Number **30623**, Attorney Docket No. **27331-501CIP2A**.

Respectfully submitted,

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